

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen *CA*
Chairperson, Committee on the Judiciary and Public Safety

Date: November 12, 2020

Subject: Report on B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2020”

The Committee on the Judiciary and Public Safety, to which Bill 23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2020”, was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.¹

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¹ The bill’s short title as introduced was the “Vulnerable User Collision Recovery Amendment Act of 2019”.

STATEMENT OF PURPOSE AND EFFECT

I. Purpose and Effect

Bill 23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2020”, was introduced on January 22, 2019, by Councilmember Mary M. Cheh, along with Committee Chairperson Charles Allen, Councilmember David Grosso, and Chairman Phil Mendelson. Councilmembers Kenyan R. McDuffie and Brianne K. Nadeau co-sponsored the bill. B23-0083 was referred to the Committee on the same day, and the Committee held a public hearing on the bill on June 24, 2019.²

The doctrine of modified comparative negligence permits recovery in a tort action, based on the parties’ relative negligence, if the plaintiff’s negligence is not the proximate cause of their own injury and is less than or equal to fifty percent (e.g. not greater than that of all the defendants combined). In all other tort actions in the District, the doctrine of contributory negligence applies, which creates a complete bar to recovery if the plaintiff is at all negligent – even one percent. The purpose of B23-0083 is to amend the Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016 (D.C. Law 21-167; D.C. Official Code § 50-2204.51 *et seq.*), to expand modified comparative negligence beyond its current limited application only in collisions with motor vehicles on “public highways”³ in which the plaintiff is a pedestrian, bicyclist, or other “non-motorized user”, which means “an individual using a skateboard, non-motorized scooter, Segway, tricycle, and other similar non-powered transportation devices”.⁴

The Committee Print provides that modified comparative negligence now applies in civil actions in which the plaintiff is a (1) pedestrian or “vulnerable user” of a public highway or sidewalk involved in a collision with a motor vehicle or another vulnerable user, or (2) vulnerable user of a public highway or sidewalk involved in a collision with a pedestrian – importantly, unless (as under current law) the plaintiff’s negligence is a proximate cause of their own injury and greater than the aggregated total negligence of all the defendants that proximately caused the plaintiff’s injury. “Vulnerable user” would mean an individual using an all-terrain vehicle, bicycle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-motorized scooter, personal mobility device, skateboard, or other similar device.

The Committee Print therefore expands each variable: (1) the settings in which plaintiffs may proportionally recover (all other conditions being met) to now include sidewalks as well as public highways, (2) the categories of plaintiffs who may recover, to also include users of all-terrain vehicles, dirt bikes, electric mobility devices, motorcycles, motorized bicycles, motor-driven cycles, personal mobility devices, skateboards, and similar devices, and (3) the categories of defendants against whom those plaintiffs may recover, to also include other vulnerable users and pedestrians. However, the Committee Print maintains the doctrine of contributory negligence in cases in which the plaintiff is a (1) pedestrian involved in a collision with another pedestrian, or

² Committee on the Judiciary and Public Safety, *Public Hearing on B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”* (June 24, 2019),

http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5095.

³ “Public highway” means “any street, road, or public thoroughfare”. D.C. Official Code § 50-1301.02(9).

⁴ D.C. Official Code § 50-2204.51(2).

(2) motor vehicle involved in a collision with another motor vehicle – and in collisions occurring in areas other than public highways and sidewalks. As introduced, B23-0083 would have expanded the categories of plaintiffs to include riders of electric scooters (now known as “electric mobility devices”) and electric bicycles (now known as “motorized bicycles”); it would not have included other settings, plaintiffs, or defendants.

Table 1 describes the universe of covered settings, plaintiffs, and defendants under current law, the introduced version of B23-0083, and the Committee Print:

Table 1: Application of the Modified Comparative Negligence Doctrine in Current Law and B23-0083

	<i>Motor Vehicle Collision Recovery Act of 2016</i>	<i>Introduced Version of B23-0083</i>	<i>Committee Print of B23-0083</i>
<i>Covered Settings of Collisions</i>	Public highway (street, road, or thoroughfare) ⁵	Public highway (street, road, or thoroughfare) or sidewalk ⁶	Public highway (street, road, or thoroughfare) or sidewalk
<i>Covered Plaintiff(s)</i>	Pedestrians; ⁷ bicyclists; ⁸ and other “non-motorized users” [users of	Pedestrians; bicyclists; other “non-motorized users” [users of skateboards, non-motorized scooters, Segways, tricycles, and other similar non-powered	Pedestrians or “vulnerable users” ¹¹ [users of all-terrain vehicles, ¹² bicycles, ¹³ dirt bikes, ¹⁴ electric mobility devices, ¹⁵ motorcycles, ¹⁶

⁵ *Supra* note 3.

⁶ “Sidewalk” means “that portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians”. 18 DCMR § 9901.1.

⁷ “Pedestrian” means “any person afoot or who is using a wheelchair or motorized wheelchair.” 18 DCMR § 9901.1.

⁸ Not defined.

¹¹ “Vulnerable user” means “an individual using an all-terrain vehicle, bicycle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-motorized scooter, personal mobility device, skateboard, or other similar device.”

¹² “All-terrain vehicle” or “ATV” means “any motor vehicle with 3 or more tires that is designed primarily for off-road use and which has a seat or saddle designed to be straddled by the operator. The terms ‘all-terrain vehicle’ and ‘ATV’ shall not include golf carts, riding lawnmowers, or tractors.” D.C. Official Code § 50-2201.02(2).

¹³ “Bicycle” means “a device which is propelled solely by human power; which is designed to be ridden by one (1) or more persons; which has a saddle or seat for each person that the device is designed and equipped to carry; which has a tandem arrangement of two (2) wheels (or is a device generally recognized as a bicycle though equipped with two front or rear wheels); and which has either one wheel at least twenty inches (20 in.) in diameter or is designed to be ridden on a roadway. This shall not include any device equipped with a motor or engine capable of propelling such device either exclusively or in combination with human power, whether or not such motor or engine is in actual operation.” 18 DCMR § 9901.1.

¹⁴ “Dirt bike” means “any motorcycle designed primarily for off-road use.” D.C. Official Code § 50-2201.02(6).

¹⁵ “Electric mobility device” means “a device weighing less than 60 pounds that: (i) Has an electric motor; (ii) Is solely powered by the electric motor or human power; (iii) Is designed to transport only one person in a standing or seated position, where the rider is not enclosed; and (iv) Is no greater than 24 inches wide and 48 inches long. [...] The term ‘electric mobility device’ shall not include a motorized bicycle, personal mobility device, motorcycle, or moped.” D.C. Official Code § 50-2201.02(6A).

¹⁶ “Motorcycle” means “a motor vehicle that has a seat or saddle for the use of the operator and has two (2) or three (3) wheels in contact with the ground. The term ‘motorcycle’ does not include a tractor, a motor driven cycle or motorized bicycle unless operated at speeds in excess of thirty miles per hour (30 mph), or a three (3)-wheeled motor vehicle with a cab and windshield.” 18 DCMR § 9901.1.

	skateboards, non-motorized scooters, Segways, tricycles, and other similar non-powered transportation devices] ⁹	transportation devices]; and “electric mobility device users” ¹⁰ [users of electric scooters or battery-assisted bicycles, but not motorcycles, mopeds, or electrically-powered wheelchairs]	motorized bicycles, ¹⁷ motor-driven cycles, ¹⁸ non-motorized scooters, ¹⁹ personal mobility devices, ²⁰ skateboards, and other similar devices]
Covered Defendant(s)	Motor vehicles ²¹	Motor vehicles	Motor vehicles, vulnerable users, and pedestrians (but not motor vehicle v. motor vehicle collisions, and not pedestrian v. pedestrian collisions)

⁹ *Supra* note 4; “non-motorized user” means “an individual using a skateboard, non-motorized scooter, Segway, tricycle, and other similar non-powered transportation devices.”

¹⁰ “Electric mobility device user”, as proposed in the introduced version, would mean “an individual using an electric scooter or battery-assisted bicycle, but shall not include a motorcycle, moped, or electrically-powered wheelchair.”

¹⁷ “Motorized bicycle” means “a 2 or 3 wheeled vehicle with all of the following characteristics: (i) A post mounted seat or saddle for each person that the device is designed and equipped to carry; (ii) A vehicle with 2 or 3 wheels in contact with the ground, which are at least 16 inches in diameter; (iii) Fully operative pedals for human propulsion; and (iv) A motor incapable of propelling the device at a speed of more than 20 miles per hour on level ground. The term ‘motorized bicycle’ shall not include electric mobility devices, personal mobility devices, or a battery operated wheelchair when operated by a person with a disability.” D.C. Official Code § 50-2201.02(11A).

¹⁸ “Motor-driven cycle” means “a motor vehicle that has: (a) A seat or saddle for the use of the operator and has: (b) Two (2) or three (3) wheels in contact with the ground; (c) A gas, electric, or hybrid motor with a maximum piston or rotor displacement of fifty cubic centimeters (50 cc), or its equivalent, which will propel the device unassisted at a maximum speed no greater than thirty miles per hour (30 mph). A motor-driven cycle shall be a motorcycle when operated at speeds in excess of thirty miles per hour (30 mph) and the operator shall be required to have on his or her possession a valid motorcycle endorsement; and (d) A direct or automatic power drive system which requires no clutch or gear shift operation by the operator after the drive system is engaged with the power unit.” 18 DCMR § 9901.1.

¹⁹ Undefined.

²⁰ “Personal mobility device” or “PMD” means “a motorized propulsion device that is designed to transport only one person that: (i) Weighs 60 pounds or more; or (ii) Is a self-balancing, two non-tandem wheeled device. [...] The term ‘personal mobility device’ shall not include: (i) A battery-operated wheelchair; (ii) An electric mobility device; or (iii) A motorized bicycle.” D.C. Official Code § 50-2201.02(13).

²¹ As subsequently amended by B23-0359: “motor vehicle” means “every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term ‘motor vehicle’ shall not include personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.” D.C. Official Code § 50-1301.02(4).

II. Background

As a general rule, the District is one of only a handful of jurisdictions with a contributory negligence tort liability scheme in almost all civil actions. Contributory negligence “preclude[s] recovery by a plaintiff if the defendant can prove that the plaintiff was [at all] negligent.”²² This is an extremely restrictive doctrine that requires an essentially perfect plaintiff. In the context of collisions with motor vehicles prior to 2016, for example, a bicyclist’s failure to comply with any of the District’s many laws and municipal regulations could constitute fault, thereby completely barring their recovery under contributory negligence. It would have been irrelevant that the defendant driver was also at fault, and even if they were more negligent than the plaintiff. As David Cranor, representing the Bicycle Advisory Council, testified at the Committee’s hearing on the bill: “Vulnerable users are more likely to sustain injuries in a collision with a motor vehicle, while the driver will usually walk away unharmed. It is a simple matter of speed and mass. Because they are disproportionately injured and more likely to sustain damage in a collision, contributory negligence transfers the burden of traffic injuries and damages from drivers to vulnerable users almost without regard to who is primarily at fault.”²³

In response to the severe inequities created by this complete bar to recovery, the Council passed the Motor Vehicle Collision Recovery Act of 2016,²⁴ which deviated from contributory negligence in adopting a “modified comparative negligence” scheme in tort claims against motor vehicles by pedestrians, bicyclists, and “non-motorized users”, provided that two conditions were satisfied: the plaintiff’s negligence could not have been (1) a proximate cause of their own injury and (2) “greater than the aggregated total amount of negligence of all of the defendants that proximately caused the plaintiff’s injury”.²⁵ Under this new scheme, a plaintiff could recover against a defendant or defendants based on their comparative fault, as long as the plaintiff’s fault did not exceed 50%. If their fault exceeded 50%, they could not recover at all. All but four other states at the time, including Maryland and Virginia, had removed contributory negligence as a defense to a tort action involving vulnerable users in favor of some form of comparative fault scheme, with a plurality adopting modified comparative fault.

In making this exception to contributory negligence, the Committee at the time reasoned that because a pedestrian, bicyclist, or other “non-motorized user” is significantly more likely to be the injured party in a collision with a motor vehicle, they were inequitably burdened by the doctrine’s application. In the Committee’s report on the bill, it stated:

“A collision between a motor vehicle and a pedestrian or bicyclist is a significant occurrence which exposes the pedestrian or bicyclist to the potential for serious injury. In 2014[, the District Department of Transportation (“DDOT”)] noted ‘pedestrians and bicyclists are among our most vulnerable roadway users, and when

²² Committee on the Judiciary, *Committee Report on B21-0004, the “Motor Vehicle Collision Recovery Act of 2016”* at 2-3 (Apr. 21, 2016), https://lims.dccouncil.us/downloads/LIMS/33197/Committee_Report/B21-0004-CommitteeReport1.pdf.

²³ *Supra* note 2 (written testimony of David Cranor, Representative, Bicycle Advisory Council), at 1, https://lims.dccouncil.us/downloads/LIMS/41715/Hearing_Record/B23-0083-HearingRecord1.pdf.

²⁴ Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016 (D.C. Law 21-167; D.C. Official Code § 50-2204.51 *et seq.*), <http://lims.dccouncil.us/Download/33197/B21-0004-SignedAct.pdf>.

²⁵ D.C. Official Code § 50-2204.52(a)(1), (2).

involved in a crash with a motor vehicle, they suffer more serious injuries than vehicle occupants.’ [...] As more people choose to bike or walk to work, the number of [collisions] with bicyclists and pedestrians with motor vehicles will increase. According to DDOT’s report on bicycle ridership and injuries in Washington, DC, in 2004, there were [] 239 cyclists’ injuries. In 2013, there were 483 such injuries, a doubling of injuries in about ten years.”²⁶

One of the practical effects of contributory negligence for vulnerable users had been to find themselves unsupported by their insurers and unable to secure counsel:

“Many pedestrians and bicyclists who might otherwise receive a settlement out of court but for the contributory rule, are denied recovery by [i]nsurance companies who, in accordance with current law, assert that the pedestrian or bicyclist was contributorily negligent. This results in pedestrians and bicyclists being in the difficult position of having to seek recovery through the Court for an amount that may be significant for the potential plaintiff, but not significant enough for an attorney to justify the costs of representing them.”²⁷

David Cranor further reasoned at the Committee’s hearing on B23-0083: “Comparative negligence does not solve misunderstandings of rules of the road, or prevent crashes, but it would substantially improve the lives of users of slow-speed mobility devices by preventing the improper application of laws from leading to significant financial loss and the inability to pay for needed medical care resulting from such crashes.”²⁸

The passage of the Motor Vehicle Collision Recovery Act of 2016 was incredibly important to restoring harm to injured users of the District’s roadways, recognizing the injustice of contributory negligence for these persons, and furthering safe streets. However, the law, notably, only applied on “public highways” and to pedestrians, bicyclists and “non-motorized user” plaintiffs, which does not include users of a great number of other similar transportation methods. B23-0083 was introduced to include users of “electric mobility devices” – i.e. electric scooters and electric bicycles – within the modified comparative scheme, and the Committee Print now expands upon the introduced version to similarly protect other vulnerable users of the District’s streets and sidewalks.²⁹

²⁶ *Supra* note 22, at 6.

²⁷ *Id.* at 7.

²⁸ *Supra* note 23.

²⁹ The Motor Vehicle Collision Recovery Act of 2016 took effect little more than one year before dockless electric scooters and bicycles arrived in the District in March 2018. They have since proliferated, and more than five million dockless e-bike and e-scooter trips were taken in 2019. In October 2019, DDOT announced plans to reduce the number of scooter operators to four, with another four slots for e-bike operators. Thirteen scooter companies and five e-bike companies applied for the slots. In December 2019, DDOT announced it had selected four of the eight e-scooter companies that had been operating to continue servicing the District – Jump, Lyft, Skip, and Spin – and two e-bike companies – Jump and HelBiz. As of the time of this report, both e-bike companies are authorized to operate (with nearly 4,000 e-bikes in service), and eight companies operate up to approximately 8,500 e-scooters – Bird, Bolt, Jump, Lime, Lyft, Razor, Skip, and Spin. DDOT has also permitted mopeds – known as “motor-driven cycles” – with Revel Transit, Inc. since the agency’s initial four-month moped demonstration pilot in August 2019.

For context, DDOT does not track specific types of injuries beyond hospitalized or not hospitalized and has requested e-scooter and e-bicycle operators to submit summarized accident reports to the agency since August 2019. Through the end of 2019, DDOT received 43 such reports, and the majority of the 21 incidents that resulted in a visit to the emergency room involved a collision with an automobile.³⁰ In its responses to the Committee on Transportation and the Environment's FY19-20 pre-performance oversight hearing questions, DDOT provided the following data in Tables 2, 3, and 4 concerning crashes in the District from 2017 to 2019:

Table 2: Pedestrian-Involved Crashes, 2017-2019

<i>Year</i>	<i>Crashes</i>	<i>Pedestrians Involved</i>	<i>Fatalities</i>	<i>Injuries</i>	<i>Disabling Injuries</i>
2017	1102	1183	13	992	100
2018	1202	1281	12	1045	105
2019 ³¹	1069	1122	12	950	102

Table 3: Bicyclist-Involved Crashes, 2017-2019³²

<i>Year</i>	<i>Crashes</i>	<i>Bicycles Involved</i>	<i>Fatalities</i>	<i>Injuries</i>	<i>Disabling Injuries</i>
2017	846	862	2	631	48
2018	684	694	3	511	40
2019*	645	657	1	493	47

Table 4: Electric Scooter-Involved Crashes, 2017-2019

<i>Year</i>	<i>Crashes</i>	<i>Scooters Involved</i>	<i>Fatalities</i>	<i>Injuries</i>	<i>Disabling Injuries</i>
2017	3	3	0	2	0
2018	49	49	1	42	5
2019*	84	84	0	70	6

Source: DDOT

III. Committee Reasoning

As introduced, B23-0083 would have included “electric mobility device users” in the statute’s modified comparative negligence scheme, which would have been defined to mean “an individual using an electric scooter or battery-assisted bicycle”, but not “a motorcycle, moped, or electrically-powered wheelchair.” Without this expansion, the applicable negligence standard in a collision between a cyclist and a motor vehicle, for example, would depend upon whether the cyclist was riding an traditional or e-bicycle (if the latter, the cyclist could not recover if they were

³⁰ Committee on Transportation and the Environment, *DDOT’s Responses to the Committee’s Pre-Performance Oversight Hearing Questions* (Jan. 14, 2020), <https://dccouncil.us/wp-content/uploads/2020/01/ddot.pdf>.

³¹ 2019 data is as of December 30, 2019.

³² This does not distinguish between electric and non-electric bicycles.

at all at fault), and in a collision between a non-motorized bicyclist, an e-scooter user, and a motor vehicle, the bicyclist could recover under a comparative scheme against the motor vehicle but not against the e-scooter user, and the e-scooter user could not recover against the others at all if they were at fault even one percent.

The introduced version of B23-0083 is an important step forward, but the bill did not cover collisions *between* these types of vulnerable users. It also did not include mopeds (known as “motor-driven cycles” or “motorcycles”, depending on their ccs or mph) or motorcycles, for example, and it was still restricted to public highways. It is, of course, possible that an individual would ride an e-scooter or e-bicycle on a sidewalk and be injured by a motor vehicle, pedestrian, or other e-scooter or e-bicycle. The important point is that all non-motor vehicles are particularly vulnerable to personal injury, and it would be nonsensical to fail to include in the Committee Print the various ways in which these users collide on our streets and sidewalks.

The Committee Print therefore include all permutations of collisions, other than motor-vehicle-to-motor-vehicle and pedestrian-to-pedestrian, which would still be governed by contributory negligence.³³ It is important to note, however, that micromobility is rapidly evolving, and it is possible that the current definitions are not inclusive of all current or future devices; for example, the term “electric mobility device” (i.e. an e-scooter), in part, requires the device to be fewer than sixty pounds. Of course, the rider of an e-scooter that weights seventy pounds is no more protected from a car than one that weighs sixty pounds. Similarly, a “motor-driven cycle” (i.e. a 50-cc moped) can only go thirty miles-per-hour, per the definition, and it then becomes a “motorcycle” when it goes over that limit. Clearly, accelerating downhill does not convert a moped into a motorcycle, but the cross-referenced definition is drafted that way for DDOT and legal purposes. This Committee does not intend to exclude devices based on the current rabbit warren of definitions, and of course, the Committee cannot contemplate what the future may hold for micromobility. For that reason, the Committee includes the language “other similar” devices in the definition of “vulnerable user”.

In conclusion, the Committee believes that a modified comparative negligence standard, only for those particularly vulnerable users at this time, is a more equitable standard than the current complete bar to recovery. It will encourage all road users to conduct themselves safely and with due regard for others. The Committee notes that since its hearing on B23-0083, the Committee on Transportation and the Environment has also passed comprehensive “shared fleet” legislation to regulate e-scooters and e-bicycles, and many of the definitions in this Print are referential to that bill.³⁴ Further, the Committee is encouraged by its sister Committee’s hard work on a comprehensive Vision Zero law for the District’s streets.³⁵ B23-0083 is intended to complement those efforts from this Committee’s vantage point on the issue.³⁶

³³ The Committee Print also does not impact the doctrines of joint and several liability or last clear chance.

³⁴ Shared Fleet Devices Amendment Act of 2020, passed on 2nd reading on October 20, 2020 (Enrolled version of B23-0359), <https://lims.dccouncil.us/Legislation/B23-0359>.

³⁵ Vision Zero Enhancement Omnibus Amendment Act of 2020, enacted on October 20, 2020 (D.C. Act 23-451; DCR ____), <https://lims.dccouncil.us/Legislation/B23-0288>.

³⁶ The Committee notes that the Committee on Transportation and the Environment likely wrestled with the larger issue of whether to require insurance of some vulnerable users; this issue is not within this Committee’s jurisdiction, but the Committee notes that without insurance, these vulnerable users may still have a difficult time obtaining counsel when injured and, therefore, being made whole. This may be an area for further discussion in the future.

LEGISLATIVE HISTORY

January 22, 2019	B23-0083 is introduced by Councilmembers Cheh, Allen, Grosso, and Chairman Mendelson.
January 22, 2019	B23-0083 is referred to the Committee on Judiciary and Public Safety.
January 25, 2019	Notice of Intent to Act on B23-0083 is published in the <i>District of Columbia Register</i> .
June 7, 2019	Notice of Public Hearing on B23-0083 is published in the <i>District of Columbia Register</i> .
June 24, 2019	Public Hearing on B23-0083 is held by the Committee on the Judiciary and Public Safety.
November 9, 2020	Consideration and vote on B23-0083 by the Committee on the Judiciary and Public Safety.

POSITION OF THE EXECUTIVE

The Committee received testimony at its June 24, 2019, public hearing on B23-0083 from Dena Iverson, Chief of Internal Affairs, District Department of Transportation, whose testimony is summarized below:

Dena Iverson – Chief of Internal Affairs, District Department of Transportation (“DDOT”)

Ms. Iverson testified in support of B23-0083 on behalf of the Executive. Broadly, Ms. Iverson stated that DDOT supports including users of shared mobility technology into the new modified comparative negligence standard that already applies to cyclists and pedestrians, because they are equally vulnerable when navigating public space. Accordingly, parity and treatment under the law is equitable and will benefit this class of road users.

DDOT recommended a technical amendment regarding the definition of “electric mobility device user”, because this is a new term that could cause confusion as to how electric scooters and battery-assisted bicycles are defined. The bill, as introduced, defines “electric mobility device user” as “an individual using an electric scooter or battery-assisted bicycle”. Ms. Iverson stated that this language causes confusion because electric scooters and battery-assisted bicycles are already captured in the current definition of personal mobility devices (“PMDs”) in the District of Columbia Municipal Regulations. A PMD is defined as “a motorized propulsion device designed to transport one person, or a self-balancing two non-tandem wheel device designed to transport only one person with an electric propulsion system, but does not include a battery-operated wheelchair.” PMD is the term currently used to reference, regulate, and identify vehicles currently in the dockless program, and therefore, she argued that its use in the Committee Print would maintain clarity and continuity surrounding the District’s approach to these vehicles. Furthermore,

the term “electric mobility device” itself is currently not defined by law. As such, DDOT recommends that the term be removed in the Committee Print and replaced with PMD.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive comments from Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING RECORD

On Monday, June 24, 2019, the Committee on the Judiciary and Public Safety held a public hearing on B23-0083. A video recording of the hearing can be viewed at <https://entertainment.dc.gov/page/on-demand-2019>. The following witnesses testified at the hearing or submitted statements to the Committee:

Public Witnesses

David Cranor – Representative, Bicycle Advisory Council

Mr. Cranor testified in support of B23-0083 on behalf of the Bicycle Advisory Council, underscoring the importance of expanding comparative negligence in collisions beyond pedestrians and cyclists to include those using e-bikes and scooters. Mr. Cranor outlined two ways in which the current doctrine of contributory negligence is burdensome to other vulnerable users. First, vulnerable users are more likely to sustain injuries in a collision with a motor vehicle, while the motor vehicle driver will usually walk away unharmed. Because vulnerable users are disproportionately injured and more likely to sustain damage in a collision, contributory negligence transfers the burden of injuries and damage from drivers to vulnerable users almost without regard to who is primarily at fault. Second, he testified that there remains confusion and misunderstanding among Metropolitan Police Department officers and the general public regarding laws for vulnerable users. He asserted that cyclists have been improperly ticketed at collisions and thus improperly assigned fault. The current doctrine of contributory negligence compounds such errors to the disadvantage of vulnerable users.

While Mr. Cranor acknowledged that the doctrine of comparative negligence does not solve misunderstandings of rules of the road or prevent collisions, he argued that it would substantially improve the lives of users of slow-speed mobility devices by preventing the improper application of tort law resulting from such crashes. By assigning damages based on the percentage the parties are at fault, vulnerable users would be protected from carrying the full burden of responsibility in a collision.

Mr. Cranor also testified that the bill does not go far enough, because many vulnerable users are not required to carry insurance, and the doctrine of contributory negligence works against them. In addition, many forms of micromobility are not included in the bill as introduced, such as motorized, seated scooters. Because these vulnerable users have the same safety and recovery issues as a cyclist or a pedestrian, he testified that the bill should be expanded to anyone on a vehicle that does not require insurance under District law.

Wayne McOwen – Executive Director, D.C. Insurance Federation

Mr. McOwen did not express a position in support of or opposition to B23-0083. He testified that the D.C. Insurance Federation (“DCIF”) is willing and eager to help support initiatives to educate and encourage continued progress toward the safe coexistence of pedestrians, drivers, and vulnerable users. Mr. McOwen stated that efforts intended to protect vulnerable users should not excuse those users from their responsibility to protect themselves and others on the road. He focused his testimony on motorized scooters and suggested that amendments be made to bolster requirements for reasonable and safe behaviors. For example, proof of insurance is not a requirement for renting scooters, although some cities, such as San Francisco, require scooter rental companies to obtain a permit from the city and provide proof of insurance before they can operate legally. Unless an insurance policy indicates otherwise, there may not be coverage in an e-scooter collision. Car insurance often omits liability coverage for motor vehicles with fewer than four wheels, and it is unlikely to apply to scooter rentals.

According to Mr. McOwen, several states have initiated actions in response to the prevalence of scooters. He stated that Delaware has banned the use of motorized scooters on public streets, and New Jersey limits their use to individuals with mobility-related disabilities. Massachusetts’ definition effectively prohibits their use due to requirements that “motorized scooters” have brake lights and turn signals, neither of which are common on rentable e-scooters. Other states are working to define scooters in statute, and given the lack of clarity in state law and the growing popularity of e-scooters, he suggested that the District consider legislation focusing on defining e-scooters in order to determine whether they are better served on streets or sidewalks. Other operational concerns include speed limits and safety considerations. Mr. McOwen testified that including provisions such as these into the Committee Print would help address the responsibility, as well as vulnerability, of e-scooter users.

Laura Miller Brooks – Public Affairs Manager, Mid-Atlantic, Lime

Ms. Miller Brooks expressed Lime’s support for B23-0083. She testified that the bill is an important step toward first- and last-mile transportation options, as well as progress toward Vision Zero goals in the District. According to Ms. Brooks, as of the date of the Committee’s hearing, District residents have taken nearly one million trips on Lime scooters alone, and thus District laws should reflect the reality that local residents value scooters as a viable transportation option while also ensuring that vulnerable users on scooters and electric bikes have fair legal protections. She argued that extending the modified comparative fault doctrine to vulnerable users on electric scooters and bikes makes sense given the Council’s intent in establishing the doctrine for traditional bicyclists and pedestrians in the Vehicle Collision Recovery Amendment Act of 2016. At that time, she stated that the Committee noted the District’s interest in promoting bicycling and walking as alternatives to motorized transportation, given their environmental, economic, and health benefits. According to Ms. Brooks, these same reasons support clarifying that the modified comparative fault doctrine extends to users of electric scooters.

Ms. Brooks testified that scooters complement the District’s array of active transportation options in a way that increases transportation equity, reduces carbon emissions, and improves traffic safety. According to Lime’s transportation data, District customers are using Lime scooters

to commute, with twenty-nine percent starting or ending their ride at transit stops, including bus and Metro, and thirty percent replaced a trip by car during their most recent trip. By ensuring that scooter users have fair legal protections, she stated that the bill is an important step toward the District making the best use of micromobility to advance its objectives. She concluded by contextualizing this bill in larger Vision Zero efforts, including the Committee on Transportation and the Environment's recommendations to increase the speed limit for electric scooters and launch a scooter parking pilot program, as well as Committee Chairperson Allen's comments to DDOT on its then-proposed dockless regulations, calling for an increased cap on the number vehicles and mechanisms to allow compliant companies to increase their fleets.

Julie Mitchell Newlands – President, Trial Lawyers Association of Metropolitan Washington, D.C.

Ms. Newlands testified to two specific concerns with B23-0083, as introduced. First, she stated that classifying scooters and electric bikes as vulnerable users is premature because it is a relatively new mode of transportation to the District. As a result, the District has not yet drafted, reviewed, and established regulations for scooters. She argued that providing scooter riders with "special" legal standards is premature until the regulations have been established and fully vetted.

Second, Ms. Newlands also expressed concerns relating to language in the bill that they argued could potentially lead to confusion. To clarify that users of motorized wheelchairs will continue to be protected in the Code, the phrase "electrically-powered wheelchair" should not be listed in the exemptions to the definition of "electric mobility device user". The section amended by the bill includes protections for "pedestrians", and this term is already defined to include any person afoot or using a wheelchair. Therefore, motorized wheelchair users are already protected under current law, and she argued that referring to those users with a slightly different term in the same section would create confusion. [*The Committee notes that the Trial Lawyers Association supports the Committee Print.*]

Navya Crick – Public Witness

Ms. Crick testified in support of B23-0083. She stated that she commutes daily via bicycle or scooter and is consistently exposed to dangerous drivers. She argued that maintaining current law would hold operators of e-scooters and e-bicycles responsible for the errors of motor vehicle drivers. She concluded by stating that e-scooters and e-bicycles are better for the environment than motor vehicles.

Ryan Evans, Xander Saide, Federico Brusa, and Christopher Semenas – Public Witnesses

The witnesses testified similarly in support of B23-0083. They underscored the incongruity between current law covering pedestrians and bicyclists but not e-scooter or e-bike riders.

IMPACT ON EXISTING LAW

B23-0083 amends the Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016 (D.C. Law 21-167; D.C. Official Code § 50-2204.51 *et seq.*), to apply a modified

comparative negligence standard in certain collisions, unless the plaintiff's negligence is a proximate cause of the plaintiff's negligence and greater than the aggregated total negligence of all the defendants that proximately caused the plaintiff's injury. Modified comparative negligence would now apply in civil actions in which the plaintiff is (1) a pedestrian or "vulnerable user" of a public highway or sidewalk involved in a collision with a motor vehicle or another vulnerable user, or (2) a vulnerable user of a public highway or sidewalk involved in a collision with a pedestrian. "Vulnerable user" would mean an individual using an all-terrain vehicle, bicycle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-motorized scooter, personal mobility device, skateboard, or other similar device.

Current law only applies a modified comparative negligence standard in cases in which the plaintiff is a pedestrian, bicyclist, or other "non-motorized user" of a public highway involved in a collision with a motor vehicle, with "non-motorized user" meaning an individual using a skateboard, non-motorized scooter, Segway, tricycle, and other similar non-powered transportation devices. B23-0083 therefore expands the areas in which plaintiffs involved in a collision may recover to include sidewalks, and it also expands the types of plaintiffs who may recover, and against whom, to include individuals using all-terrain vehicles, dirt bikes, electric mobility devices, motorcycles, motorized bicycles, motor-driven cycles, personal mobility devices, skateboards, and similar devices. B23-0083 maintains contributory negligence in cases in which the plaintiff is a (1) pedestrian involved in a collision with another pedestrian, or (2) motor vehicle involved in a collision with another motor vehicle – and in collisions occurring in areas other than public highways and sidewalks.

FISCAL IMPACT

The Council adopts the fiscal impact statement of the District's Chief Financial Officer.

SECTION-BY-SECTION ANALYSIS

Section 1 States the short title.

Section 2 Amends the Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016 (D.C. Law 21-167; D.C. Official Code § 50-2204.51 *et seq.*), to:

(a) Add definitions for "all-terrain vehicle", "bicycle", "dirt bike", "electric mobility device", "motorcycle", "motorized bicycle", "motor-driven cycle", "personal mobility device", "sidewalk", and "vulnerable user", and repeal the definition for "non-motorized user"; and

(b) Unless the plaintiff's negligence is a proximate cause of the plaintiff's injury and greater than the total negligence of all defendants that proximately caused the plaintiff's injury, apply a modified comparative negligence standard in cases in which the plaintiff is a: (1) pedestrian or vulnerable user of a public highway or sidewalk involved in a collision with

a motor vehicle or another vulnerable user, or (2) vulnerable user of a public highway or sidewalk involved in a collision with a pedestrian.

Section 3 Contains the fiscal impact statement.

Section 4 Contains the effective date.

COMMITTEE ACTION

On November 12, 2020, the Committee on the Judiciary and Public Safety held an Additional Meeting to consider B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2020”. The meeting was called to order at 9:35 a.m. Chairperson Charles Allen recognized a quorum consisting of himself and Councilmembers Anita Bonds and Brooke Pinto. Chairperson Allen moved the Committee Report and Print for B23-0083 en bloc with leave for staff to make technical, editorial, and conforming changes. Chairperson Allen moved to incorporate the earlier comments of Councilmember Cheh on the bill, in which she had thanked Councilmember Allen for bringing the bill forward to markup. Chairperson Allen then moved to incorporate the earlier comments of Councilmember Pinto on the bill, in which she had stated that the doctrine of contributory negligence can produce harsh results for vulnerable victims of collisions, and comparative fault is more equitable and fairer. She also had expressed her support for the Committee Print and added that the Council’s passage of the Motor Vehicle Collision Recovery Act of 2016 brought greater fairness to the law for victims, and this bill catches up with the subsequent evolution and expansion of other transportation options.

The Committee then voted 3-0 to approve the Committee Report and Print, with the Members voting as follows:

YES: Chairperson Allen and Councilmembers Bonds and Pinto

NO: None

PRESENT: None

ABSENT: Councilmembers Mary M. Cheh and Vincent C. Gray

LIST OF ATTACHMENTS

- (A) B23-0083, as introduced
- (B) Notice of Public Hearing, as published in the *District of Columbia Register*
- (C) Agenda and Witness List
- (D) Witness Testimony
- (E) Fiscal Impact Statement
- (F) Legal Sufficiency Determination
- (G) Comparative Committee Print
- (H) Committee Print

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : January 23, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, January 22, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Vulnerable User Collision Recovery Amendment Act of 2019", B23-0083

INTRODUCED BY: Councilmembers Cheh, Grosso, Allen, and Chairman Mendelson

CO-SPONSORED BY: Councilmembers Nadeau and McDuffie

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

Attachment

cc: General Counsel
Budget Director
Legislative Services

1 

2 Chairman Phil Mendelson

3 

4 Councilmember Charles Allen

5 

6 Councilmember Mary M. Cheh

7 

8 Councilmember David Grosso

9
10 A BILL
11
12

13
14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
15
16

17
18 To amend the Motor Vehicle Collision Recovery Amendment Act of 2016 to limit the application of
19 the doctrine of contributory negligence in cases of a collision between electric mobility device
20 user of a public highway and a motor vehicle.

21 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
22 act may be cited as the “Vulnerable User Collision Recovery Amendment Act of 2019”.

23 Sec. 2 The Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016
24 (D.C. Law 21-167; D.C. Official Code § 50-2204.51 *et seq.*), is amended as follows:

25 (a) Section 2 (D.C. Official Code § 50-2204.51) is amended by adding a new paragraph
26 (5) to read as follows:

27 “(5) “Electric mobility device user” means an individual using an electric scooter
28 or battery-assisted bicycle, but shall not include a motorcycle, moped, or electrically-powered
29 wheelchair.”.

30 (b) Section 3(a) (D.C. Official Code § 50-2204.52(a)) is amended by striking the phrase
31 “pedestrian, bicyclist, or other non-motorized user of a public highway” and inserting the phrase
32 “pedestrian, bicyclist, other non-motorized user of a public highway, or electric mobility device
33 user of a public highway” in its place.

34 Sec. 3. Fiscal impact statement.

35 The Council adopts the fiscal impact statement in the committee report as the fiscal
36 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
37 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

38 Sec. 4. Effective date.

39 This act shall take effect following approval by the Mayor (or in the event of veto by the
40 Mayor, action by Council to override the veto), a 30-day period of congressional review as
41 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
42 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
43 Columbia Register.

ATTACHMENT B

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**B23-0083, THE “VULNERABLE USER COLLISION RECOVERY
AMENDMENT ACT OF 2019”**

**B23-0134, THE “COMMUNITY HARASSMENT PREVENTION
AMENDMENT ACT OF 2019”**

**B23-0253, THE “ALTERNATIVE SERVICE OF PROCESS ON DISTRICT OF COLUMBIA
RESIDENTS AMENDMENT ACT OF 2019”**

AND

B23-0300, THE “ANTITRUST REMEDIES AMENDMENT ACT OF 2019”

**Monday, June 24, 2019, 10:30 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Monday, June 24, 2019, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”; Bill 23-0134, the “Community Harassment Prevention Amendment Act of 2019”; Bill 23-0253, the “Alternative Service of Process on District of Columbia Residents Amendment Act of 2019”; and Bill 23-0300, the “Antitrust Remedies Amendment Act of 2019”. The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:30 a.m.

The stated purpose of B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”, is to amend the Motor Vehicle Collision Recovery Amendment Act of 2016 to limit the application of the doctrine of contributory negligence in cases of a collision between an electronic mobility device user of a public highway and a motor vehicle.

The stated purpose of B23-0134, the “Community Harassment Prevention Amendment Act of 2019”, is to amend the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to make it unlawful to deface or burn a religious or secular symbol on any property of another without permission or to place or display on such property a physical impression that a reasonable person would perceive as a threat to physically damage the property of another; and to amend the Omnibus Public Safety and Justice Amendment Act of 2009 to make it unlawful to harass an entity.

The stated purpose of B23-0253, the “Alternative Service of Process on District of Columbia Residents Amendment Act of 2019”, is to amend the Motor Vehicle Safety Responsibility Amendment Act of the District of Columbia to allow a plaintiff to use an alternative method of service of process when serving defendants in motor vehicle cases who reside in the District of Columbia.

The stated purpose of B23-0300, the “Antitrust Remedies Amendment Act of 2019”, is to identify remedies the Attorney General may seek in an antitrust action, to specify how monetary relief recovered on behalf of individuals in an action under D.C. Official Code § 28-4507(b) shall be distributed, and to apply the notice and exclusion provisions of that section specifically to individuals.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Thursday, June 20**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on Monday, July 8.**

ATTACHMENT C

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**B23-0083, THE “VULNERABLE USER COLLISION RECOVERY
AMENDMENT ACT OF 2019”**

**B23-0134, THE “COMMUNITY HARASSMENT PREVENTION
AMENDMENT ACT OF 2019”**

**B23-0253, THE “ALTERNATIVE SERVICE OF PROCESS ON DISTRICT OF COLUMBIA
RESIDENTS AMENDMENT ACT OF 2019”**

AND

B23-0300, THE “ANTITRUST REMEDIES AMENDMENT ACT OF 2019”

**Monday, June 24, 2019, 10:30 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

AGENDA AND WITNESS LIST

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”

- i. Public Witnesses**

1. David Cranor, Representative, Bicycle Advisory Council
2. Wayne McOwen, Executive Director, District of Columbia Insurance Federation
3. Laura Miller Brooks, Public Affairs Manager, Mid-Atlantic, Lime

ii. Government Witness

1. Dena Iverson, Chief of External Affairs, District Department of Transportation

B23-0134, the “Community Harassment Prevention Amendment Act of 2019”

ii. Public Witnesses

iii. Government Witnesses

1. Kelly O’Meara, Executive Director, Strategic Change Division, Executive Office of the Chief of Police, Metropolitan Police Department
2. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

B23-0253, the “Alternative Service of Process on District of Columbia Residents Amendment Act of 2019”

i. Public Witness

1. Daniel Singer, Executive Board Member, Trial Lawyers Association of Metropolitan D.C.

ii. Government Witnesses

B23-0300, the “Antitrust Remedies Amendment Act of 2019”

i. Public Witnesses

ii. Government Witness

1. Catherine A. Jackson, Chief, Public Integrity Section, Office of the Attorney General

IV. ADJOURNMENT

ATTACHMENT D

Testimony of David Cranor of the Bicycle Advisory Council

The **Bicycle Advisory Council supports the Vulnerable User Collision Recovery Amendment Act of 2019**, expanding the current contributory negligence carve-out for pedestrians and cyclists to those on e-bikes and scooters. Under the current law, if one of those users is found to be even 1% at fault in a collision, it can be impossible for them to recover any damages from the other party in a lawsuit; even if the other party was primarily at fault. This is harmful to people in an unfair way.

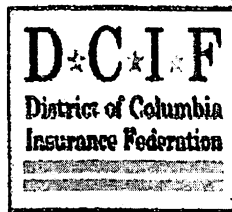
By instead assigning damages based on the percentage the guilty party is at fault, the carve-out protects vulnerable users from carrying the full burden when a driver is primarily at fault. The current doctrine of contributory negligence is particularly burdensome for vulnerable users for several reasons:

1. Vulnerable users are more likely to sustain injuries in a collision with a motor vehicle, while the driver will usually walk away unharmed. It is a simple matter of speed and mass. Because they are disproportionately injured and more likely to sustain damage in a collision, contributory negligence transfers the burden of traffic injuries and damage from drivers to vulnerable users almost without regard to who is primarily at fault.
2. There remains confusion and misunderstanding among MPD officers and the general public regarding laws for vulnerable users. Cyclists have been improperly ticketed at collisions and thus improperly assigned fault, and its possible such mistakes could be made for others as well. The current doctrine of contributory negligence compounds such errors, to the disadvantage of vulnerable users.

Comparative negligence does not solve misunderstanding of rules of the road, or prevent crashes, but it would substantially improve the lives of users of slow-speed mobility devices by preventing the improper application of laws from leading to significant financial loss and the inability to pay for needed medical care resulting from such crashes.

It's the opinion of the BAC however, that **this bill doesn't go far enough**. The heart of this issue is that many vulnerable road users are not required to carry insurance, and rightfully so, and that the doctrine of contributory negligence works against those who don't. The Council has expanded the carve-out to some vulnerable users, specifically a new category of "electric mobility device users," but not others. Those riding e-bikes and electric scooters will benefit from this, but not other users of "motorized bicycles" or "personal mobility device". This leaves out many small transportation devices including motorized, seated scooters - like "rascal" brand scooters, segways and smaller mopeds. None of these users are required to carry insurance. The BAC sees no good reason to leave these vulnerable users in the situation that this law is meant to prevent. A person on a segway has the same safety and recovery issues as a person on a bicycle. A person on a gasoline-powered bicycle has the same issues as one on a battery powered one. Therefore, we would suggest that this carve-out be widened even more. Instead of limiting it to just these two types of vulnerable users, we believe the law should be expanded to anyone on a vehicle that does not require insurance under DC law. That would mean all users

of "personal mobility devices" and "motorized bicycles." Widening the carve-out to apply to any user who isn't required to have insurance addresses the actual issue - that the doctrine of contributory negligence doesn't work for people without insurance - and it prevents us from being back here in 4 years to address new personal mobility devices that at this moment none of us foresee.



DISTRICT OF COLUMBIA INSURANCE FEDERATION

1455 Pennsylvania Ave, NW Suite 400 Washington DC 20014

wmcowen@dcif.org * 202.797.0757

Testimony of

District of Columbia Insurance Federation

Submitted to the

DC Council Committee on the Judiciary and Public Safety

Public Hearing Held

24 June 2019

**23-83, the "Vulnerable User Collision Recovery
Amendment Act of 2019"**

Good morning, Chairman Allen and members of the Committee on the Judiciary and Public Safety. My name is Wayne E. McOwen, and I represent the District of Columbia Insurance Federation (DCIF), a state insurance trade association whose members provide property, casualty, life and health insurance products and services in the District of Columbia. On behalf of the DCIF, I offer the following remarks for consideration:

The insurance industry applauds a number of legislative initiatives which, over the past several years, have encouraged cyclists, pedestrians and motorists to safely share the historic pathways that weave around and through the nation's capital – an environment that swells daily with a workforce of resident and non-resident employees, and swells seasonally with tourists from around the world. But, enabling and maintaining a safe environment is not solely the responsibility of the law makers and the law enforcers. Walking, steering a bicycle, driving a motorized conveyance – all require attentiveness, courteous behavior, a respect for rules of the road and respect for the others that one encounters on those roads. These are goals achieved less by legislation, more by education. I appreciate the opportunity to say publicly, and for the record, that the DCIF is willing and eager to help to support initiatives to educate and encourage continued progress toward the safest coexistence among pedestrians, cyclists, motorists and users of other-than-four-wheeled motorized conveyances.

The initiative that is the subject of this Hearing is one which intends to amend an initiative which became law in October, 2016. That initiative, now Act A21-490, deferred the issue of safety in favor of carving out one group for unique treatment. Choosing a mode of transportation that won't pollute the environment is admirable. But even the strongest sense of environmental responsibility does nothing to increase safety and prevent injuries!

How many motorists run red lights? How many cyclists run red lights and take shortcuts? How many pedestrians jaywalk? How many e-scooter operators terrorize pedestrians on our city sidewalks? Contributory negligence holds that if one contributes to an accident, there is a barrier to recovery. And, there should be.

Still, the Motor Vehicle Collision Recovery Act of 2016 is now law. And the initiative that is the subject of today's Hearing intends to further amend it to embrace an additional

class of “vulnerable users.” But, should efforts intended to protect vulnerable users of any class excuse those users from their responsibility to protect themselves and others?

For the balance of my testimony I will focus on motorized scooters and suggest that if Act A21-490 is to be amended, let’s use this opportunity to infuse that amendment with a requirement for reasonable and safe behaviors.

They’ve got clever names—Bird, Lime, Skip, Scoot, Spin—and in many cities they appeared seemingly overnight. E-scooter sharing is a new phenomenon in the burgeoning landscape of alternative transportation we’ve come to know as ridesharing. In some US cities there are hundreds of scooters, and they’ve caused headaches for consumers and for the cities in which they are operated. Some scooters, capable of reaching speeds of 15-20mph, may or may not require proof of a valid driver’s license. Proof of insurance is not a requirement for renting an e-scooter, although some cities, such as San Francisco, require scooter rental companies to obtain a permit from the city and provide proof of insurance before they can operate legally. But, what about the operators of scooters?

Unless an insurance policy indicates otherwise, there may not be coverage in case of an e-scooter accident. A health or accident insurance policy may provide coverage for the medical injury sustained by the operator. However, there may not be any coverage if the operator is found liable for an accident or damage. Automobile insurance often omits liability coverage for motor vehicles with fewer than four wheels, and it’s unlikely to apply to scooter rentals. Although most homeowner policies provide some liability coverage even away from the residence, it may be limited or excluded because the scooter is a rental. Numerous e-scooter accidents have been reported since 2018. In September, 2018, the first reported death from an e-scooter accident occurred in Dallas.

Proponents argue that scooters are inexpensive, easy to use, convenient for short trips and they help reduce traffic and air pollution. A recent survey of 7,000 people in ten US markets revealed that, in less than twelve months during 2018, nearly 4% said they’d used an e-scooter.

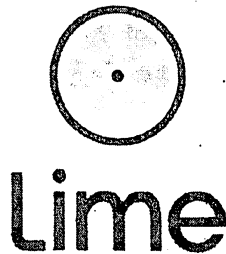
Others view scooters more as a nuisance than a convenience, with residents and pedestrians complaining of cluttered sidewalks and reckless driving.

Several states have initiated actions. Delaware has banned the use of motorized scooters on public streets, and New Jersey limits their use to people with mobility-related disabilities. Massachusetts' definition effectively prohibits their use due to requirements that "motorized scooters" have brake lights and turn signals, neither of which is common on rentable e-scooters.

Many states are still working to define scooters in statute. As of December last year, ten states, California, Delaware, Massachusetts, Minnesota, New Jersey, Oregon, Texas, Utah, Virginia and Washington, had statutorily defined an electric or motorized scooter. Eight of those states offer guidance on legal operation of the vehicles.

Given the lack of clarity in state law and the growing popularity of e-scooters, the District of Columbia might consider legislation focusing on defining e-scooters, determining whether they can be operated on streets or sidewalks and setting speed limits and other safety considerations. Infusing such provisions in B23-83 is an ideal opportunity to address the responsibility, not just the vulnerability, of e-scooter users.

Thank you for the opportunity to provide testimony on this issue. I welcome your comments, questions regarding the above.



**TESTIMONY OF LAURA MILLER BROOKS, PUBLIC AFFAIRS MANAGER
LIME**

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

Public Hearing on Bill 23-83, the "Vulnerable User Collision Recovery Amendment Act"

**John A. Wilson Building Room 120
June 24, 2019**

Good morning Chair Allen, members of the Committee on the Judiciary and Public Safety, and staff. Thank you for convening this hearing on Bill 23-83, the Vulnerable User Collision Recovery Amendment Act (the "Act"). My name is Laura Miller Brooks, and I am the Mid-Atlantic Public Affairs Manager for Lime. Lime is a dockless mobility company that aims to reduce dependence on personal automobiles for short-distance transportation through the equitable distribution of shared scooters, bikes, and transit vehicles. Lime is about safe, convenient, environmentally friendly, and affordable movement for all residents. I appreciate the opportunity to testify. Now more than ever, the District needs to support first- and last-mile transportation options while at the same time working toward Vision Zero goals. The Act is an important step toward both objectives.

Lime is proud to have been operating in the District since DDOT launched its dockless mobility demonstration program in September 2017. In this time, D.C. residents and visitors have taken more than 850,000 rides.

While shared micromobility is relatively new to the District, we commend members of this Committee for leading a robust conversation on the issue through Act and other efforts. Lime strongly supports the Act in particular as an important safety measure for D.C. residents who use electric scooters and electric bicycles for transportation. Extending the modified comparative fault doctrine to these users makes sense given the Council's intent with establishing the doctrine for bicyclists and pedestrians through the Motor Vehicle Collision Recovery Amendment Act of 2016. At that time, this Committee noted the District's interest in promoting bicycling and walking as alternatives to motorized transportation, given their transportation, environmental, economic, and health benefits. It also noted the rapid increase in the use of bicycles for transportation within the District.

These same reasons support making clear that the modified comparative fault doctrine extends to users of electric scooters. Lime first deployed scooters in the District in March 2018, and in just 15 months, scooter usage has proliferated among D.C. residents. According to a recent *Washington Post* poll, 16% of D.C. residents reported using an electric scooter for transportation. So, like bicycles, scooters are quickly growing in use in the District, and the laws should reflect the reality that D.C. residents want scooters as a transportation option.

Further, like bicycling and walking, ensuring that using a scooter is a viable option for transportation helps advance the District's policy goals. Scooters complement the District's array of active transportation options in a way that increases transportation equity, reduces

carbon emissions, and improves traffic safety. Our transportation data shows that D.C. customers are using Lime scooters to commute, with 29 percent starting or ending their ride at transit stops, including bus and Metro. Importantly, 30 percent of Lime riders replaced a trip by automobile (personal car, carshare, or ride-hailing) during their most recent trip. We can quickly help the District, at no cost to the city, expand transportation options to residents who currently do not have an option that works for them, and to neighborhoods where these options are inadequate. Lime's ability to bring our fleet to District neighborhoods is one of our major focuses and desires. By ensuring that scooter users have fair legal protections, the Act is an important step toward the District making the best use of micromobility to advance its objectives.

The Act also is a vital complement to the safety measures that Lime is already taking. We have been successful in these efforts. According to a study released by the Baltimore City Department of Transportation this spring, available data indicated that scooters had a comparable safety record to other forms of transportation.¹ In fact, scooters were involved with fewer injuries than walking and far fewer injuries than driving. At the same time, like this Committee, we recognize that safety is a shared responsibility. The District has an important role to play in ensuring that our infrastructure—both physical and legal—is adequate to protect all road users. This Act is a key part of this infrastructure that will make District's transportation network safer and more equitable for all.

¹ Baltimore City Dep't of Transp., *Dockless Vehicle Pilot Program: Evaluation Report* 15 (Mar. 2019), available at <https://transportation.baltimorecity.gov/sites/default/files/Pilot%20evaluation%20report%20FINAL.pdf>.

Lime strongly supports the Vulnerable User Collision Recovery Amendment Act, including its language as introduced, as well as the broader efforts of members of this Committee to ensure that shared micromobility is a transportation option for all D.C. residents. This includes the Committee on Transportation and the Environment's budget recommendations to increase the speed limit for electric scooters and launch a scooter parking pilot program. It also includes Councilmember Allen's comments to DDOT on its then-proposed dockless regulations, calling for an increased cap on the number vehicles and mechanisms to allow compliant companies to increase their fleets quickly. Throughout this time, members and staff have engaged with us to discuss how Lime can better serve the District. These actions demonstrate a recognition that shared micromobility has value for the District and will be a long-term fixture in the District's transportation network.

Thank you for the opportunity to testify.

Dear Councilmember Allen,

I commute daily either riding bicycles or scooters and I have to ride defensively and aggressively to protect my life. Every day there are hostile drivers who pass me too closely, suddenly cut in front of me to make right hand turns, scream profanities at me just for existing, open car doors without checking their mirrors, or simply are too distracted to notice me. I have made my share of mistakes as well and by grace I have not been seriously injured or killed.

It seems ridiculous to me to hold cyclists responsible for injury or death when they are hit by vehicles. Even if the cyclist makes a mistake and did not see the oncoming car when they darted across an intersection, the driver of the vehicle should be alert and forgiving. The point that most people seem to miss is that when cyclists make a mistake, they are injured or die but when drivers make a mistake, they kill or hurt others. E-bikes and e-scooters are no different than non-electric bikes and scooters in this regard.

Riding bikes and scooters is good for the environment and more residents should feel that this is a safe option. Currently, however, there is little incentive to ride bikes and scooters when the risk of injury is high and the lack of concern and care for each other is perpetuated by policies that value property and "rights" more than people.

Please extend protections to e-bike and e-scooter riders by passing the Vulnerable User Collision Recovery Amendment Act of 2019.

If pedestrians and cyclists can recover their losses from medical charges and property damage in a collision, those protections should be extended to e-scooter and e-bike riders as well.

Please note my support for this legislation.

Thank you for your leadership,
Navya Crick

Dear Councilmember Allen,

Please extend protections to e-bike and e-scooter riders by passing the Vulnerable User Collision Recovery Amendment Act of 2019.

If pedestrians and cyclists can recover their losses from medical charges and property damage in a collision, those protections should be extended to e-scooter and e-bike riders as well.

Please note my support for this legislation.

Thank you for your leadership,
Ryan Evans

Dear Councilmember Allen,

Please extend protections to e-bike and e-scooter riders by passing the Vulnerable User Collision Recovery Amendment Act of 2019.

If pedestrians and cyclists can recover their losses from medical charges and property damage in a collision, those protections should be extended to e-scooter and e-bike riders as well.

Please note my support for this legislation.

Thank you for your leadership,
Xander Saide

Dear Councilmember Allen,

Please extend protections to e-bike and e-scooter riders by passing the Vulnerable User Collision Recovery Amendment Act of 2019.

If pedestrians and cyclists can recover their losses from medical charges and property damage in a collision, those protections should be extended to e-scooter and e-bike riders as well.

Please note my support for this legislation.

Thank you for your leadership,
Federico Brusa

Dear Councilmember Allen,

Please extend protections to e-bike and e-scooter riders by passing the Vulnerable User Collision Recovery Amendment Act of 2019.

If pedestrians and cyclists can recover their losses from medical charges and property damage in a collision, those protections should be extended to e-scooter and e-bike riders as well.

Please note my support for this legislation.

Thank you for your leadership,
Christopher Semenas



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June 24, 2019

Honorable Charles Allen
Council of the District of Columbia
Chairman, Committee on the Judiciary and Public Safety
1350 Pennsylvania Avenue, NW, Suite 110
Washington, DC 20004

RE: Vulnerable User Collision Recovery Amendment Act

Dear Chairman Allen:

The District of Columbia is a city looking toward the future with alternate transportation solutions – including bicycles, ebicycles and scooters. It is vitally important for the legislature to review the laws that apply to these alternatives; however, our Association has two concerns regarding bill 23-83 the Vulnerable User Collision Recovery Amendment Act. First, we are concerned that expanding the definition of “vulnerable user” to include electric scooters is premature. This mode of transportation is relatively new to our city and to many other jurisdictions. As a result, our city agencies have not had time to draft, review and establish regulations for the scooters. Providing scooter riders with special legal standards is premature until these regulations have been established and fully vetted.

Our second concern relates to language in the bill that could potentially lead to confusion. To clarify that users of motorized wheelchairs will continue to be protected in this section of the Code and in other areas of the Code, the phrase “electrically-powered wheelchair” should not be listed in the exclusions to the definition of “electric mobility device user” in bill 23-83 section 2(a). The section of the D.C. Code amended by bill 23-83 includes protections for “pedestrians” (see D.C. Code §50-2204.51(3)). The term “pedestrian” is defined in 18 DCMR §9901.1 as “any person afoot or who is using a wheelchair or motorized wheelchair.” Therefore, motorized wheelchair users are already protected under the current vulnerable user law, as amended in 2016, and referring to those users with a slightly different term in the same Code section under the definition of “electric mobility device user” will create confusion.

The intent of current legislation will be preserved with the changes to bill 23-83 noted below:


Section 2(a) Section 2 (D.C. Official Code §50-2204.51) is amended by adding a new paragraph (5) to read as follows"

(5) "Electric mobility device user" means an individual using an electric scooter or battery-assisted bicycle, but shall not include a motorcycle, ~~or moped, or electrically powered wheelchair.~~ **or**

Respectfully yours,

Trial Lawyers Association of Metropolitan Washington, DC


Julie Mitchell Newlands
President


Christopher T. Nace
Chair, Legislative Committee

cc: Members of the Committee on the Judiciary and Public Safety

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Transportation



Public Hearing on
B23-083, the “Vulnerable User Collision Recovery Amendment Act of 2019”

Testimony of
Dena Iverson
Chief of External Affairs

Before the
Committee on Judiciary and Public Safety
Council of the District of Columbia
The Honorable Charles Allen, Chairperson

John A. Wilson Building
Room 120
1350 Pennsylvania Avenue, NW
Washington, DC 20004

June 24, 2019, 2019
10:30 A.M.

Good morning, Chairperson Allen, members, and staff of the Committee. I am Dena Iverson, Chief of External Affairs at the District Department of Transportation, or DDOT. I am pleased to testify before you today on behalf of Mayor Bowser's Administration regarding B23-083, the *Vulnerable User Collision Recovery Amendment Act of 2019*.

Position and Technical Amendment

From a broad perspective, DDOT supports encapsulating users of this new shared-mobility technology in the modified comparative negligence standard applied to cyclists and pedestrians, as they are equally as vulnerable when navigating the public space. Accordingly, parity in treatment under the law is equitable and would benefit this class of road users. However, DDOT recommends a technical amendment regarding the definition of "electric mobility device user" as this new term may cause confusion on how electric scooters and battery-assisted bicycles are defined.

This bill defines "electric mobility device user" as "an individual using an electric scooter or battery-assisted bicycle..." This language causes confusion because electric scooters and battery-assisted bicycles are already captured in the current definition of "personal mobility device" or "PMD." A PMD is defined as

1) A motorized propulsion device designed to transport one person
or 2) a self-balancing, two non-tandem wheeled device, designed to
transport only one person with an electric propulsion system, but
does not include a battery-operated wheelchair.

“PMD” is the term currently used to reference, regulate, and identify vehicles in the dockless program; therefore, its use in this bill would maintain clarity and continuity surrounding the District’s approach these vehicles. Furthermore, the term “electric mobility device,” itself, is currently not defined by law, meaning that “electric mobility device user” identifies the user of a device that, itself, remains undefined.

As such, DDOT recommends that the term “electric mobility device user” be removed from the bill and replaced with “personal mobility device” or “PMD” because its current definition captures the intended devices.

This concludes my testimony. Thank you for allowing me the opportunity to testify before you today. I am available to answer any questions that you may have.

ATTACHMENT E

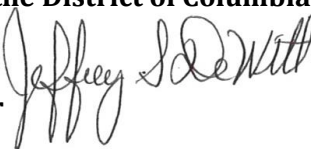
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 6, 2020

SUBJECT: Fiscal Impact Statement – Vulnerable User Collision Recovery
Amendment Act of 2020

REFERENCE: Bill 23-83, Draft Committee Print as provided to the Office of Revenue
Analysis on November 6, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill further limits the ability to use contributory negligence in a civil case involving a pedestrian or bicyclist,¹ by applying such restrictions to “vulnerable user,”² which has a broader definition than “bicyclist.” The bill also specifies that the ability to use contributory negligence is limited to collisions between a pedestrian or vulnerable user and a motor vehicle or other vulnerable user, or a collision between a vulnerable user and a pedestrian.³ Contributory negligence assigns some blame for a pedestrian’s or vulnerable user’s injuries to the pedestrian or vulnerable user themselves and makes it more difficult for the injured party to seek damages. The new vulnerable user category creates a larger pool of potentially injured parties that can still seek civil damages unless they are the

¹ Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016 (D.C. Law 21-167; D.C. Official Code § 50-2204.52).

² A vulnerable user encompasses the user of a bicycle, all-terrain vehicle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-motorized scooter, personal mobility device, skateboard, or something similar.

³ This applies to collisions occurring on a public highway or sidewalk.

The Honorable Phil Mendelson

FIS: Bill 23-83, "Vulnerable User Collision Recovery Amendment Act of 2020," Draft Committee Print as provided to the Office of Revenue Analysis on November 6, 2020

proximate cause of their own injury and their negligence is greater than the aggregate negligence of all defendants that caused the injury.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. There are no costs associated with further limiting the use of contributory negligence as a defense in civil cases involving collisions between pedestrians and vulnerable users and motor vehicles or vulnerable users, or those between vulnerable users and pedestrians.

ATTACHMENT F



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Charles Allen

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: November 10, 2020

**RE: Legal sufficiency determination for Bill 23-83, the
Vulnerable User Collision Recovery Amendment
Act of 2020**

The measure is legally and technically sufficient for Council consideration.

The bill would amend the Motor Vehicle Collision Recovery Act of 2016 to provide that, unless the plaintiff's negligence is a proximate cause of the plaintiff's injury and greater than the aggregated total negligence of all the defendants that proximately caused the plaintiff's injury, the negligence of the following shall not bar the plaintiff's recovery in any civil action in which the plaintiff is one of the following:

- A pedestrian or vulnerable user¹ of a public highway or sidewalk involved in a collision with a motor vehicle or another vulnerable user; or
- A vulnerable user of a public highway or sidewalk involved in a collision with a pedestrian.

I am available if you have any questions.

¹ Under the bill, the term "vulnerable user" means an individual using an all-terrain vehicle, bicycle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-motorized scooter, personal mobility device, skateboard, or other similar device.

ATTACHMENT G

1 **Comparative Committee Print**
2 **B23-0083**
3 **Committee on the Judiciary & Public Safety**
4 **November 12, 2020**

5
6 **Section 2**
7

8 **D.C. Official Code § 50-2204.51. Definitions.**
9

10 For the purposes of this subchapter, the term:

11 (1) “All-terrain vehicle” shall have the same meaning as provided in section 2(2)
12 of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C.
13 Official Code § 50-2201.02(2)).

14 (2) “Bicycle” shall have the same meaning as provided in 18 DCMR § 9901.1.

15 (3) “Dirt bike” shall have the same meaning as provided in section 2(6) of the
16 District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official
17 Code § 50-2201.02(6)).

18 (4) “Electric mobility device” shall have the same meaning as provided in section
19 2(6A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C.
20 Official Code § 50-2201.02(6A)).

21 ~~(45) "Motor vehicle" shall have the same meaning as provided in § 50-1301.02(4).~~

22 ~~(2) "Non-motorized user" means an individual using a skateboard, non-motorized~~
23 ~~scooter, Segway, triycle, and other similar non-powered transportation devices.~~

24 ~~“(6) “Motorcycle” shall have the same meaning as provided in 18 DCMR § 9901.1.~~

25 (6) “Motorcycle” shall have the same meaning as provided in 18 DCMR § 9901.1.

26 (7) “Motorized bicycle” shall have the same meaning as provided in section 2(11A)
27 of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C.
28 Official Code § 50-2201.02(11A)).

29 (8) “Motor-driven cycle” shall have the same meaning as provided in 18 DCMR §
30 9901.1

31 ~~(39) "Pedestrian" shall have the same meaning as provided in 18 DCMR § 9901.1.~~

32 (10) “Personal mobility device” shall have the same meaning as provided in section
33 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C.
34 Official Code § 50-2201.02(13)).

35 ~~(411) "Public highway" shall have the same meaning as provided in § 50-~~
36 ~~1301.02(9).~~

37 (12) “Sidewalk” shall have the same meaning as provided in 18 DCMR § 9901.1.

38 (13) “Vulnerable user” means an individual using an all-terrain vehicle, bicycle,
39 dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-
40 motorized scooter, personal mobility device, skateboard, or other similar device.

41
42 **D.C. Official Code § 50-2204.52. Contributory negligence limitation.**
43

44 ~~(a) The negligence of a pedestrian, bicyclist, or other non-motorized user of a public~~
45 ~~highway involved in a collision with a motor vehicle shall not bar the plaintiff's recovery in any~~
46 ~~civil action unless the plaintiff's negligence is~~ Unless the plaintiff's negligence is a proximate cause

47 of the plaintiff's injury and greater than the aggregated total negligence of all the defendants that
48 proximately caused the plaintiff's injury, the negligence of the following shall not bar the
49 plaintiff's recovery in any civil action in which the plaintiff is one of the following:

50 (1) ~~A proximate cause of the plaintiff's injury~~ A pedestrian or vulnerable user of a
51 public highway or sidewalk involved in a collision with a motor vehicle or another vulnerable user;
52 and or

53 (2) ~~Greater than the aggregated total amount of negligence of all of the defendants~~
54 ~~that proximately caused the plaintiff's injury~~ A vulnerable user of a public highway or sidewalk
55 involved in a collision with a pedestrian.

56 (b) Nothing in this subchapter shall be construed to:

57 (1) Change or affect the doctrine of joint and several liability or the last clear chance
58 doctrine; or

59 (2) Reduce the legal protections provided to pedestrians and cyclists under:

60 (A) § 7-1004; or

61 (B) § 50-1606.

ATTACHMENT H

1 **Committee Print**
2 **B23-0083**
3 **Committee on the Judiciary & Public Safety**
4 **November 12, 2020**
5
6
7

8 A BILL
9

10 23-0083
11

12
13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
14
15
16
17

18 To amend the Motor Vehicle Collision Recovery Act of 2016 to limit the application of the
19 doctrine of contributory negligence in civil actions relating to collisions involving certain
20 users of public highways and sidewalks.

21 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
22 act may be cited as the “Vulnerable User Collision Recovery Amendment Act of 2020”.

23 Sec. 2. The Motor Vehicle Collision Recovery Act of 2016, effective November 26, 2016
24 (D.C. Law 21-167; D.C. Official Code § 50-2204.51 *et seq.*), is amended as follows:

25 (a) Section 2 (D.C. Official Code § 50-2204.51) is amended to read as follows:

26 “Sec. 2. Definitions.

27 “For the purposes of this act, the term:

28 “(1) “All-terrain vehicle” shall have the same meaning as provided in section 2(2)
29 of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C.
30 Official Code § 50-2201.02(2)).

31 “(2) “Bicycle” shall have the same meaning as provided in 18 DCMR § 9901.1.

32 “(3) “Dirt bike” shall have the same meaning as provided in section 2(6) of the
33 District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official

Code § 50-2201.02(6)).

“(4) “Electric mobility device” shall have the same meaning as provided in section 2(6A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)).

“(5) “Motor vehicle” shall have the same meaning as provided in section 2(4) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(4)).

“(6) “Motorcycle” shall have the same meaning as provided in 18 DCMR § 9901.1.

“(7) “Motorized bicycle” shall have the same meaning as provided in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)).

“(8) “Motor-driven cycle” shall have the same meaning as provided in 18 DCMR § 9901.1.

“(9) “Pedestrian” shall have the same meaning as provided in 18 DCMR § 9901.1.

“(10) “Personal mobility device” shall have the same meaning as provided in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)).

“(11) “Public highway” shall have the same meaning as provided in section 2(9) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(9)).

“(12) “Sidewalk” shall have the same meaning as provided in 18 DCMR § 9901.1.

“(13) “Vulnerable user” means an individual using an all-terrain vehicle, bicycle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-

motorized scooter, personal mobility device, skateboard, or other similar device.”.

(b) Section 3(a) (D.C. Official Code § 50-2204.52(a)) is amended to read as follows:

“(a) Unless the plaintiff’s negligence is a proximate cause of the plaintiff’s injury and greater than the aggregated total negligence of all the defendants that proximately caused the plaintiff’s injury, the negligence of the following shall not bar the plaintiff’s recovery in any civil action in which the plaintiff is one of the following:

“(1) A pedestrian or vulnerable user of a public highway or sidewalk involved in a collision with a motor vehicle or another vulnerable user; or

“(2) A vulnerable user of a public highway or sidewalk involved in a collision with a pedestrian.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.